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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/712,788	11/14/2000	Michael C. Finley	19109.0020U2	8889

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EXAMINER

KNEPPER, DAVID D

ART UNIT

PAPER NUMBER

2654

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/712,788

Applicant(s)

FINLEY ET AL.

Examiner

David D. Knepper

Art Unit

2654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 Jul 2001 & 9 Dec 2002 (IDS).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/2001 & 12/2002.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

1. Applicant's correspondence filed on 16 July 2001 and 9 December 2002 (2 sheets of IDS) has been received and considered. Claims 1-14 are pending.

Priority Claims

2. The applicant(s) should check their filing receipts and/or the Patent Application Information Retrieval (PAIR) system for the acknowledgment of their **domestic** priority or benefit claims (if any) under 35 USC 119(e), 120 or 121 (37 CFR 1.78).

Claims

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-14 are rejected under 35 U.S.C. § 103 as being unpatentable over Chen (5,991,737).

As Per claim 1, Chen teaches or suggests “facilitating a transaction with a person listening to transmitted audible content” with his automated consumer response to publicly broadcast information:

“detecting an electronic request transmitted from said request device” (his consumer transmitter 18, col. 2, lines 55-56 which allows the user to send a request);

“matching said content to said deliverable” (suggested by his utilizing pattern recognition, [to] identify the songs, col. 4, lines 53-54); and

“providing said deliverable” (his fulfillment of an end product or service to the consumer, col. 3, lines 45-46).

It is noted that Chen does not explicitly teach details for “matching said content”. However, he teaches that it is possible to store and recall data corresponding to broadcast information, col. 5, lines 50-51 and that broadcasts of songs may be matched utilizing pattern recognition, col. 4, lines 52-56. It would have been obvious for a person having ordinary skill in the pertinent art, at the time the invention was made, to combine the broadcast storage and pattern recognition taught by Chen because Chen teaches that the order processor may be automated or manual...utilizing either touch tones or voice recognition... or an interactive voice response system, col. 4, lines 61-67 which teaches that it is obvious to provide a wide variety of order mechanisms requiring certain data to be stored and recognized. Thus, the combination of storing and matching broadcasts of songs would have been obvious to facilitate ease of ordering as fairly suggested by Chen as noted above.

Claim 2: Receiving payment is inherent is the ordering process.

Claim 3: A remote location is obvious in view of his use of a cellular telephone, col. 2, lines 55-56.

Claims 4-14 are rejected under similar arguments as applied to claims 1-3 above. It is clear that Chen teaches that a variety of transmitting and receiving mechanisms may be

synchronized to allow manual or automatic transmission of necessary ordering information to include television, radio...tuning and current date and time, see col. 5, lines 23-55.

Prior Art

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Larson (5,539,635) is cited to show that it is well known to allow customers to order desired music heard on the radio by identifying time, date and broadcaster of the desired selections.

6. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

TC2600 Fax Center
(703) 872-9314

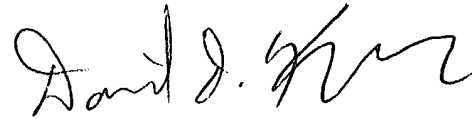
Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David D. Knepper whose telephone number is (703) 305-9644.

The examiner can normally be reached on Monday-Thursday from 07:30 a.m.-6:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richemond Dorvil, can be reached on (703) 305-9645.

Any inquiry of a general nature or relating to the status of this application should be directed to customer service whose telephone number is (703) 306-0377.

A handwritten signature in black ink, appearing to read "David D. Knepper". The signature is fluid and cursive, with the first name "David" and last name "Knepper" clearly distinguishable.

David D. Knepper
Primary Examiner
Art Unit 2654